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DISTRICT IV/II

February 22, 2017

To:

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You are hereby notified that the Court has entered the following opinion and order:

2017AP48-NM	In re the termination of parental rights to S.D.-L., a person under the age of 18: Jefferson County Human Services Department v. L.L.(L.C. #2015TP14)
2017AP49-NM	In re the termination of parental rights to S.J.M., a person under the age of 18: Jefferson County Human Services Department v. L.L. (L.C. #2015TP15)

Before Reilly, P.J.¹

L.L. appeals from orders terminating her parental rights to her two children. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULES 809.107(5m) and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(e) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

809.32. L.L. was served with a copy of the report and advised of her right to file a response. No response has been received from L.L. Based upon an independent review of the no-merit report and circuit court records, this court concludes that no issue of arguable merit could be raised on appeal and affirms the orders.

On July 31, 2015, petitions to terminate L.L.'s parental rights were filed by the children's guardian ad litem (GAL). The ground for termination was that L.L. had been denied visitation under orders entered May 27, 2014, and one year had elapsed since entry of the orders with no modification allowing visitation. *See* WIS. STAT. § 48.415(4). A motion for summary judgment on the grounds for termination was filed. It set forth that the children had been removed from L.L.'s care in March 2012 and were found to be children in need of protection and services. Copies of the May 27, 2014 orders suspending all visitation and contact between the children and their parents were attached. The May 27, 2014 orders included the "Notice Concerning Grounds To Terminate Parental Rights." Subsequent to the filing of the motion, there were several adjournments to ensure that L.L. had adequate appointed counsel. L.L. did not submit any materials in opposition to the motion for summary judgment and it was granted.²

² L.L., through counsel, indicated at the summary judgment motion hearing that she stipulated to the grounds. Later in the hearing, the circuit court explained that because there was simply a failure to submit materials in opposition to summary judgment and the motion was granted for that reason, it was not necessary to conduct the colloquy required under WIS. STAT. § 48.422(7), before accepting a parent's admission of the alleged facts in a petition. There is no arguable merit to a potential claim that the admission colloquy was required simply because counsel indicated that grounds were stipulated to. L.L. did not oppose the motion for summary judgment. It is sufficient that the record establishes deliberateness to the absence of the filing of opposing materials. Moreover, the record does not suggest that anything could have been submitted to defeat summary judgment. Summary judgment was appropriate where the grounds for unfitness were proved by official documentary evidence. *See Steven V. v. Kelley H.*, 2004 WI 47, ¶37, 271 Wis. 2d 1, 678 N.W.2d 856.

At the disposition hearing, the circuit court heard testimony from the children's therapist, a psychologist who evaluated the children, the case manager, L.L., and L.L.'s parents. The children's foster mother made a statement at the hearing and indicated that her family was willing to adopt the children. The evidence was that L.L. had not had face-to-face contact with the children for over three years. The circuit court concluded that termination of parental rights was in the children's best interests because of the lack of a substantial relationship with L.L., the stability and consistency the children had experienced and thrived in within their foster home, the children's continued need for stability, and their ability to enter into a more stable and permanent family relationship as a result of the termination of parental rights.

After the filing of a petition for termination of parental rights and the completion of preliminary matters, a contested termination proceeding involves a two-step procedure. *Sheboygan Cty. DHHS v. Julie A.B.*, 2002 WI 95, ¶24, 255 Wis. 2d 170, 648 N.W.2d 402. The first step is a fact-finding hearing which determines whether grounds exist to terminate the parent's rights. *Id.* If grounds for termination are found to exist, the circuit court must find that the parent is unfit. *Id.*, ¶26. The second phase is the dispositional phase. *Id.*, ¶28. The court must determine whether the parent's rights should be terminated. *Id.* The best interest of the child is the prevailing factor considered by the circuit court in making this decision. WIS. STAT. § 48.426(2). In determining the best interests of the children, the circuit court is required to consider the agency report and the factors enumerated in § 48.426(3). *Julie A.B.*, 255 Wis. 2d 170, ¶4. It is also entitled to consider other factors, including factors favorable to the parent. *Id.*

Counsel's no-merit report addresses as potential appellate issues whether time limits set forth in WIS. STAT. ch. 48 for termination proceedings were properly extended, whether summary judgment on the ground for termination was proper, whether L.L.'s request for a

dispositional hearing before a jury should have been granted, and whether the dispositional decision was an erroneous exercise of discretion or otherwise failed to consider the best interests of the children. Our review of the record confirms counsel's conclusion that these potential issues lack arguable merit. The no-merit report sets forth an adequate discussion of the potential issues to support the no-merit conclusion and we need not address them further.

Our review of the records discloses no other potential issues for appeal. Accordingly, we accept the no-merit report, affirm the orders terminating L.L.'s parental rights, and discharge appellate counsel of the obligation to represent L.L. further in these appeals.

Upon the foregoing reasons,

IT IS ORDERED that the orders of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved of any further representation of L.L. in these matters. *See* WIS. STAT. RULE 809.32(3).

Diane M. Fremgen
Clerk of Court of Appeals